

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE SIDING AND INSULATION CO.,

Plaintiff,

-vs-

ALCO VENDING, INC.,

Defendant.

: CASE NO. 1:11 CV 01060
:
:

: ORDER ADOPTING THE
: MAGISTRATE JUDGE'S REPORT AND
: RECOMMENDATION AND GRANTING
: THE DEFENDANT'S MOTION FOR
: SUMMARY JUDGMENT
:
:

UNITED STATES DISTRICT JUDGE LESLEY WELLS

The plaintiff The Siding and Insulation Co. ("the Company") filed this putative class action lawsuit alleging that the defendant Alco Vending, Inc. ("Alco") sent unsolicited faxes in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"). The parties filed cross-motions for summary judgment, which were referred to United States Magistrate Judge Nancy A. Vecchiarelli for a Report and Recommendation. The Magistrate Judge's Report and Recommendation, which is now

before the Court, advises that the defendant's motion for summary judgment be granted and that the plaintiff's motion for summary judgment be denied as moot. (Doc. 56).


In reaching her conclusion, the Magistrate Judge reasoned as follows. First, the Magistrate Judge found that the faxes at issue here, which advertised the defendant Alco's services, were actually sent by a third-party, Business to Business Solutions ("B2B"). After reviewing an FCC ruling on the issue and the relevant case law, the Magistrate Judge determined that Alco could not be held liable as a "sender" of unsolicited faxes under the TCPA simply because the faxes advertised Alco's services. Instead, the Magistrate Judge concluded, the plaintiff was required to prove that Alco was vicariously liable for B2B's having sent the unsolicited faxes under common law agency principles.

The Magistrate Judge went on to determine that the plaintiff's complaint failed to state a plausible claim of vicarious liability under theories of actual agency, apparent authority, and ratification. Then, assuming *in arguendo* that the complaint had stated a plausible agency claim, the Magistrate Judge determined that there was insufficient evidence on the record by which a jury could reasonably find for the plaintiff under any of those agency theories. The Magistrate Judge accordingly recommended that summary judgment be granted in favor of the defendant Alco.

The plaintiff has filed objections to the Magistrate Judge's recommended decision. This Court has considered *de novo* those portions of the Report and Recommendation to which the plaintiff objects, pursuant to Local Rule 72.3(b) and 28 U.S.C. § 636(b)(1). Finding the plaintiff's objections to be without merit and the Report and Recommendation to be without error, the Court accepts the Magistrate Judge's

recommendations. The Report and Recommendation is accordingly adopted in its entirety, and the defendants' motion for summary judgment is granted. The plaintiff's motion for summary judgment is denied as moot.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Date: April 22 2015